

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1103 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJKAMAL ENTERPRISES

VISHWAKARMA BHUVAN

Versus

MANUBHAI BHIKHUBHAI MISTRY

Appearance:

MR JB PARDIWALA for Petitioner

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 19/08/96

ORAL JUDGEMENT

Whether a tenant could be afforded statutory umbrella from being evicted on the ground of non-payment of rent due to financial crunch or monetary disability or non-availability of requisite fund, is the sole but interesting question which has come up for consideration and adjudication invoking correct interpretation and

applicability of provisions of section 12(3)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Bombay Rent Act' for short) in this revision under section 29(2) of the Bombay Rent Act.

The petitioners are the original defendants-tenants and respondents are the original plaintiffs-landlords. For the sake of convenience and brevity, they are hereinafter referred to as landlords and tenants. The suit shop No.5 situated on the ground floor of building known as Vishwakarma Bhuvan situated on Halar road, Valsad bearing municipal census No.2334/A/2 ('demise premises' for short) came to be given on lease to the tenants on 1.2.1977 at a monthly rent of Rs.175/-. Liability to pay all taxes was on the part of the tenants over and above the agreed rent.

The landlords instituted a legal battle by filing Regular civil suit No. 242/82 in the court of Civil Judge (J.D.) at Valsad against the tenants on the ground of non-payment of rent after giving notice under section 12(2). The tenants were in arrears of rent for more than six months. The tenants contested the suit inter alia contending that they were ready and willing to pay rent and there was no case for eviction on the ground of non-payment of rent. The trial court after considering the facts and circumstances, dismissed the suit for possession on 30.9.1986 on the ground that there was no case for 13(1)(a) and the tenants were entitled to protection of section 12(3)(b). The trial court held that the entire rent was not payable by month and there was no case of section 12(3)(a). Moreover, the tenants had deposited the arrears of rent during the pendency of the suit and had fulfilled other conditions of section 12(3)(b). Therefore, the trial court dismissed the suit for possession.

Being aggrieved by the said judgment and decree dismissing the suit for possession on the ground of non-payment of rent, the landlords carried the matter in the District court by filing Regular civil Appeal No. 171 of 1986. On appreciation of the facts and circumstances, the appellate court allowed the appeal, set aside the judgment and decree recorded by the trial court. Thus, the appellate court granted ejectment decree against the tenants on the ground of non-payment of rent under section 12(3)(b) by passing the judgment and decree on 29.2.1996 which is assailed in this revision under section 29(2) of the Bombay Rent Act.

The learned advocate for the petitioners has raised the following contentions:

(i) that the decree for possession under section 12(3)(b) is illegal in view of the amended provisions of section 12(3)(b)'

(ii) that the tenants could not pay the arrears of rent during the pendency of appeal on the ground of financial crunch and monetary disability and that they otherwise were ready to pay the entire arrears if ordered by the court. It is, therefore, submitted that discretion should not be exercised in favour of the landlords under section 12(3)(b) by passing a decree for ejectment on the ground of non-payment of rent.

First of all, it may be mentioned that section 12 of the Bombay Rent Act provides some fetter on the right of the landlord for possession of the demise premises on determination of tenancy on the ground of non-payment of rent. In order to appreciate the scope and object of section 12, it would be necessary to refer to the said provision at this stage. Section 12 reads as under:

"12.(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, insofar as they are consistent with the provisions of this Act.

(1A) Where by reason of riot or violence of a mob any material part of the premises in a disturbed area is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the landlord shall not be entitled to-

(a) the standard rent and permitted increases due for the premises.

(b) recover possession of such premises merely on the ground of non-payment of standard rent and permitted increases due.,

during the period in which such premises remain so destroyed or unfit.

(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) (a) where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months, or more and the tenant neglects to make payment thereof until the expiration of the

period of one month after notice referred to in

sub-section (2), the court may pass a decree for eviction in any such suit for recovery of possession.

(b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the court may fix, the tenant pays or tenders in court the standard rent and permitted increases then due .

(4) Pending the disposal of any such suit, the court may out of any amount paid or tendered by the tenant pay to the landlord such amount towards payment of rent or permitted increases due to him as the court thinks fit.

Explanation: In any case where there is a dispute as to the amount of standard rent or permitted increases recoverable under this Act, the tenant shall be deemed to be ready and willing to pay

such amount, if before the expiry of the period of one month after notice referred to in sub-section (2), he makes an application to the court under sub-section (3) of section 11 and thereafter pays or tenders the amount of rent or permitted increases specified in the order made by the court."

It could very well be seen from the aforesaid provisions that in a suit for eviction, on the ground of non-payment of rent in which the following conditions are satisfied, the court is empowered to pass a decree for possession on the ground of nonpayment of rent against a tenant:

- (i) rent is payable by month;
- (ii) there is no dispute about amount of standard rent and permitted increases;
- (iii) there are arrears of rent and arrears are for a period of more than six months.
- (iv) notice demanding such arrears is served upon the tenant under section 12(2);
- (v) tenant has neglected to pay such arrears within a period of one month next after receipt of notice.

Considering the entire scheme of provisions of section 12 and scope of provisions of section 12(3)(a), all the aforesaid ingredients must simultaneously exist. Therefore,, if any of these conditions is wanting under section 12(3)(b), the trial court took the view that there was no case for section 12(3)(a) which came to be confirmed by the appellate court. The view taken by the trial court that provisions of section 12(3)(a) are not attracted appears to be justified as the very first ingredient of section 12(3)(a) was wanting. There is no dispute about the fact that the entire rent was not payable by month. The tenant was required to pay agreed rent of Rs.175/- per month and was also liable to pay all municipal taxes and education cess which were not payable per month. In the circumstances, the tenant had to pay agreed rent of Rs.175/- per month over and above the aforesaid liability to pay taxes which were not payable per month, with the result, one of the ingredients attracting the rigours of provisions of section 12(3)(a) that rent must be payable by month, was not fulfilled. In these circumstances, both the courts have rightly concluded that there was no case for eviction under section 12(3)(a).

The question that would lead us to further consideration

is whether passing of decree of eviction under section 12(3)(b) by the appellate court and reversing the judgment and decree of the trial court is justified in the circumstances. In this connection, the aforesaid submissions raised on behalf of the tenants are required to be examined.

Firstly, it may be noted that amendment in the provisions of section 12(3)(b) made by the Gujarat Act VII/85 deleting the word 'regularly' is not prospective. The contention, therefore, that when the suit came to be dismissed by the trial court on 30.9.1986 and the appeal came to be decided on 29.2.1996 after the amendment, the merits are required to be decided in light of the amended provisions, cannot be accepted.

The amendment brought in section 12(3)(b) (Act XVII/47) by Gujarat Act VII/85 deleting or omitting the word 'regularly' cannot be applied to the case on hand for the simple reason that the amendment is not retrospective in operation. In other words, the amendment therein deleting the word 'regularly' in section 12(3)(b) are prospective which came into operation in 1985. The cause of action arose much prior to that date and the suit was also filed in 1982. Therefore, the said amended provision deleting the word 'regularly' in section 12(3)(b) being prospective in nature, would not be applicable. It cannot be contended that merely because the appeal came to be decided after introduction of the amended provisions, the said provisions would apply. This contention is without any merit and is required to be rejected for the simple reason that amendment in section 12(3)(b) deleting the word 'regularly' will not apply to the present case as it was not brought into operation retroactively. Since the amendment was prospective in nature, the said amended provision will not have any application. It cannot be applied only on the ground that appeal came to be decided after the amendment came into operation. This proposition is very much settled and requires no further interference. Again, it may be recalled that the appeal is in continuance of the suit which was filed in 1982 much anterior to the date of operation of the amended provision under section 12(3)(b). The amended provisions deleting the word 'regularly' in section 12(3)(b) are retrospective and not prospective. This view is fortified by the Division Bench decision rendered in Sakarbai Devraj vs. Ibrahim, 1994(2) GLR 1091.

This brings into focus the second contention on the ground of non-payment of rent. It is contended that rent could not be paid during the pendency of the appeal on the

ground of monetary disability, financial hardship on the part of tenants. Unfortunately, financial disability or non-payment of rent has no role to play while appreciating and examining the merits of provisions of section 12 of Bombay Rent Act. However the hard case may be, the said hardship has no legal voice and no legal leg to stand to get out of the clutches of the ejectment decree. Since the legislature has not provided such contingencies for non-payment of rent, the court cannot inject into it, such expression while interpreting and applying the provisions of section 12. This proposition of law is explained by this court in Valimahmod Kamalbhai vs. Prajapati Motilal, 37 GLR 566 (Coram: J.N. Bhatt, J.).

There is no dispute about the fact that this court has no discretion if the material ingredients attracting rigors of provisions of section 12(3)(b) are established. It is for the tenant to show that he has been qualified to earn the statutory protection of provisions of section 12(3)(b). When the case does not fall in section 12(3)(a), it would fall under section 12(3)(b). Following ingredient would entail eviction under section 12(3)(b):-

- (i) rent is payable by month;
- (ii)
- (ii) there is no dispute about amount of standard rent and permitted increases;
- (iii) there are arrears of rent and arrears are for a period of more than six months;
- (iv) notice demanding such arrears is served upon the tenant under section 12(2).
- (v) tenant has neglected to pay such arrears within a period of one month next after receipt of notice.

It could very well be seen from the aforesaid provisions that the tenant is obliged to pay or tender the amount of rent during the pendency of suit and appeal. In order to show that he was ready and willing to pay rent and permitted increases, it must be satisfactorily shown that he has complied with provisions of section 12(3)(b). No decree for eviction could be rendered in any suit if on the first date of hearing of such suit or on or before such other day as the court may fix, the tenant pays or tenders in court standard rent and permitted increases then due and thereafter continues to pay or tender standard rent and permitted increases till the suit is finally decided.

in the present case, no dispute of standard rent was raised within one month after service of notice under

section 12(2). Rent was in arrears for more than six months when notice came to be served under section 12(2). No dispute of standard rent came to be raised even in the written statement. Thus, there is no dispute of standard rent and, therefore, no issue was raised in the trial court. There is no dispute about the fact that during the pendency of the appeal before the appellate court, the tenant failed to pay simultaneously or tender rent during the entire period of appeal much less regularly or otherwise. The appeal took 9 years, 3 months and 15 days for its ultimate decision during which rent was in arrears for more than Rs. 20,000/- which was eventually not paid. Thus, the tenant remained indifferent and grossly neglected to make payment or tender the amount of rent during the entire period of appeal which was for more than nine years. In the circumstances, he has lost statutory protection of section 12(3)(b).

The tenant cannot be allowed to raise a plea for non-payment of rent resulting into financial crunch or hardship or monetary disability. No such plea is allowed to be raised to thwart the decree for ejectment under section 12(3)(a) or (b). Such ground is neither legal nor valid. It is, therefore, explicit that in case if conditions attracting the rigors of provisions of section 12(3)(a) or (b) are satisfied, the court has no discretion but to pass a decree for ejectment on the ground of non-payment of rent. The appellate court has, therefore, rightly recorded the decree for possession on the ground of non-payment of rent under section 12(3)(b) against the tenant.

After having examined the facts and circumstances and considering the legal position, this court is satisfied that the present revision under section 29(2) wherein the scope is very much circumscribed is without any merit and, therefore, the revision is rejected at its threshold.
